

## SEPARATE ACCOUNTS FUNDING GUARANTEED MINIMUM BENEFITS UNDER GROUP CONTRACTS MODEL REGULATION

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### Section 1. Authority

This regulation is issued pursuant to the authority vested in the commissioner of the State of [insert state] under [insert citation for authority].

**Drafting Note:** Insert title of the chief insurance regulatory official whenever the term “commissioner” appears.

### Section 2. Purpose

This regulation prescribes rules for separate accounts that fund guaranteed minimum benefits under group contracts. In addition the regulation sets out the procedures for establishing and maintaining these separate accounts and the reserve requirements for these accounts.

### Section 3. Scope

This regulation applies to a group life insurance contract providing survivor income benefits, a group annuity contract, or a funding agreement issued for delivery on or after the [insert prospective effective date for applicable state] if the contract is a group contract that utilizes a separate account and provides guaranteed minimum benefits. However, for contracts issued prior to [insert date 24 months after effective date of regulation] pursuant to applicable laws and regulations prior to the effective date of the regulation, the insurance company may continue to operate in accordance with the issued contract and plan of operations, if any, until such time as the applicable contract terms or provisions are substantially changed, at which time a filing complying with this regulation shall be required. This regulation shall not apply to modified guaranteed annuities or modified guaranteed life insurance or variable annuity or variable life insurance subject to Sections [insert reference] or equity index products but this regulation shall apply to index contracts as defined in Section 4.

**Drafting Note:** It is expected that individual regulators, where applicable, will retain the right to withdraw approval of previously filed contract forms for new issuance if they do not conform to the regulation. Therefore, no language explicitly withdrawing approval of these forms was included.

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**Drafting Note:** This regulation shall govern solely a group contract that utilizes a separate account and provides guaranteed minimum benefits.

**Drafting Note:** Contracts would remain “grandfathered” until such time as the applicable contract terms or provisions are substantially changed, such as by a contract amendment modifying interest rate or withdrawal provisions. Changes that would not require the filing of a form of contract in compliance with this regulation or a change in the basis of recording asset and liability values in the annual statement would include: address changes, continued deposits, and other non-substantive changes such as these.

#### **Section 4. Definitions**

As used in this regulation, the following terms have these meanings:

- A. “Account assets” means separate account assets plus any assets held in the general account or a supplemental account to meet the asset maintenance requirements.
- B. “Account contracts” means the contracts providing guaranteed minimum benefits or other benefits and funded by a separate account and, if applicable, funded in part by the general account or a supplemental account to meet the asset maintenance requirements.
- C. “Actuarial opinion” means the opinion of the valuation actuary required to be submitted to the commissioner pursuant to Section 10.
- D. “Actuarial memorandum” means the memorandum of the valuation actuary prepared pursuant to Section 10 that supports the actuarial opinion.
- E. “Affirmatively approved” means approval of an insurer’s plan of operations for a class of contracts containing the form of contract under review, after the plan of operations associated with the class of contracts has been reviewed by the insurer’s domiciliary insurance department, and the plan of operations has been found to be in compliance with the NAIC Model Regulation for Separate Accounts Funding Guaranteed Minimum Benefits Under Group Contracts by the domiciliary insurance department. Affirmatively approved does not mean approval as a result of the deemer provision.
- F. “Appointed actuary” means the qualified actuary appointed or retained either directly by or by the authority of the board of directors through an executive officer of the company to prepare the annual statement of actuarial opinion for the company as a whole pursuant to Section [insert reference to standard valuation law].
- G. “Asset maintenance requirements” means the requirement to maintain assets to fund contract benefits in accordance with Sections 7, 8 and 9.
- H. “Book value contract” means a fixed accumulation contract (GIC), purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, that does not participate in the investment experience of a separate account, with a fixed interest rate guarantee, including a guarantee based on an external index, and that is supported by a separate account, the plan of operations of which provides that the separate account’s assets are valued as if the assets were held in the insurance company’s general account.
- I. “Class of contracts” means the set of all contracts to which a given plan of operations pertains.

- J. “Contract” means a group life insurance policy, group annuity contract, or funding agreement that is within the scope of this regulation as set forth in Section 3.
- K. “Contract benefits” means the amounts obligated to be paid by the insurance company under an account contract.
- L. “Contract liabilities” means the liabilities of the insurance company under account contracts, including liabilities with respect to which guarantees as to amount are provided by the insurance company and liabilities with respect to which guarantees as to amount are not provided by the insurance company.
- M. “Date of filing,” with respect to a filing for approval of a form of contract under this regulation, means the date as defined by the applicable rules, regulations or statutes of the state of issue with regard to contract filings.

**Drafting Note:** Individual states may wish to insert a specific reference to the applicable rule, regulation or statute.

- N. (1) “Derivative instrument” means an agreement, option, instrument or a series or combination of them:
  - (a) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or
  - (b) That has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one or more underlying interests.
- (2) Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures and any other agreements, options or substantially similar instruments or any series or combination of them and any agreements, options or other instruments permitted under [insert reference to state law equivalent to Section 18 of the NAIC Investments of Insurers Model Act (Defined Limits Version)].
- O. “Duration” means, with respect to separate account or supplemental account assets or guaranteed contract liabilities, a measure of the price sensitivity of a stream of cash flows to interest rate movements, including, but not limited to, modified duration or option adjusted duration.
- P. “General account” means the assets of the insurance company other than separate account and supplemental account assets, and associated reserves.
- Q. “Guaranteed minimum benefits” means benefits payable under the terms of the contract that are based on either (i) the greater of Paragraph (1) or (2), or (ii) Paragraph (3) of this subsection where:
  - (1) Is that part of the market value of account assets that determines the contractholder’s benefits, i.e., to the extent the assets are beneficially “client” assets; provided, that if asset performance does not determine the contractholder’s benefit, this subparagraph equals zero;

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- (2) Is a fixed minimum guarantee related to all or part of the considerations received under the contract; and
  - (3) Is an amount based upon a publicly available interest rates series or an index of the aggregate market value of a group of publicly traded financial instruments, either of which is specified in the contract.
- R. Hedging transaction means:
- (1) A derivative transaction, involving use of one or more derivative instruments, that is entered into and maintained to reduce:
    - (a) The risk of a change in the value, yield, price, cash flow or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring; or
    - (b) The currency exchange risk or the degree of exposure as to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring; or
  - (2) Other derivative transactions specified as hedging transactions in rules adopted by the commissioner.
- S. “Index contract” means a contract under which contract benefits shall be based upon a publicly available interest rate series or an index of the aggregate market value of a group of publicly traded financial instruments, either of which is specified in the contract, and that does not provide a guarantee of some or all of the consideration received plus earnings at a fixed rate specified in advance and that does not provide any secondary guarantees on elective benefits or maturity values.
- T. “Market value separate account” means a separate account in which the separate account assets are valued at their market value.
- U. “Plan of operations” means a written plan meeting the requirements of Section 5B.
- V. “Prudent estimate” assumption means an assumption developed by applying a margin to the best estimate assumption for that risk.
- W. “Qualified actuary” means an individual who is qualified to sign statements of actuarial opinion in accordance with the qualification standards set forth in [insert reference to section of the regulations related to actuarial opinions and memoranda].
- X. “Separate account” means an account established pursuant to [insert reference to provision of insurance law permitting the establishment of separate accounts].
- Y. “Spot rate”
- (1) “Treasury-based spot rate” corresponding to a given time of benefit payment means the yield on a zero-coupon non-callable and non-prepayable United States government obligation maturing at that time, or the zero-coupon yield implied by the price of a representative sampling of coupon-bearing, non-

callable and non-prepayable United States government obligations in accordance with a formula set forth in the plan of operation.

- (2) “Index spot rate” corresponding to a given time of benefit payment means the zero-coupon yield implied by (x) the Barclays Short Term Corporate Index (for a given time of benefit payment under one year) or (y) the zero-coupon yield implied by the Barclays U.S. Corporate Investment Grade Bond Index (for a given time of benefit payment greater than or equal to one year).
- (3) “Blended spot rate” corresponding to a given time of benefit payment means a blend of 50% of each of (i) the Treasury-based spot rate, and (ii) the index spot rate. To the extent that guaranteed contract liabilities are denominated in the currency of a foreign country rates, in one of the two (2) highest rating categories by an independent nationally recognized United States rating agency acceptable to the commissioner and which are supported by investments denominated in the currency of the foreign country, the Treasury-based spot rate component of the blended spot rate may be determined by reference to substantially similar obligations of the government of the foreign country. For liabilities other than those described above, the blended spot rate shall be determined on a basis mutually agreed upon by the insurer and the commissioner.

- Z. “Supplemental account” means a separate account established pursuant to Sections 7, 8 or 9 to which assets may be contributed by the insurance company for the purpose of complying, in whole or in part, with the asset maintenance requirement and with respect to which neither the account contracts nor applicable law shall provide that the assets of the supplemental account are not chargeable with liabilities arising out of any other business of the insurance company.
- AA. “United States government obligation” means a direct obligation issued, assumed, guaranteed or insured by the United States of America or by an agency or instrumentality of the United States.
- BB. “Valuation actuary” means the appointed actuary or, alternatively, a qualified actuary designated by the appointed actuary to render the actuarial opinion pursuant to Section 10. Written documentation of any such designation shall be on file at the company and available for review by the commissioner upon request.

## **Section 5. Plan of Operations Requirements**

A contract may not be delivered or issued for delivery in this state unless the issuing insurance company is licensed as a life insurance company in this state. In addition, a domestic insurer may not deliver or issue for delivery, either in this state or outside this state, a contract belonging to a specific class of contracts unless the insurer has satisfied the requirements of Subsections A and B of this section with respect to that class.

- A. A domestic insurer will satisfy the requirements of this section with respect to a class of contracts if the insurer has filed a plan of operations pertaining to the class of contracts, together with copies of forms of the contracts in the class, with the commissioner and the filing has been approved or has not been disapproved within the sixty-day period following the date of the filing, in which event the plan of operations shall be deemed approved.

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- B. The plan of operations for a class of contracts shall describe the financial implications for the insurer of the issuance of contracts in the class, and shall include at least the following:
- (1) A description of the class of contracts to which the plan of operations pertains. This should include a description of the products, the markets to which the products will be sold, the benefits that are being offered (including whether those benefits will be paid on a market or book value basis);
  - (2) A statement that the plan of operations will be administered in accordance with the requirements prescribed by the commissioner pursuant to this regulation, along with a statement that the insurer will comply with the plan of operations in its administration of the contract;
  - (3) A statement of the investment policy for the separate account and any supplemental account, including requirements for diversification, maturity, type and quality of assets, and as applicable, target duration for matching guaranteed contract liabilities or the degree to which the investment policy is likely to match the performance of an interest rate series or index on which contract benefits are based;
  - (4) A description of how the value of the separate account assets and any supplemental account is to be determined, including but not limited to, a statement of procedures and rules for valuing securities and other assets that are not publicly traded;
  - (5) A description of how the guaranteed contract liabilities are to be valued, including, if applicable, with respect to guaranteed minimum benefits or other benefits, a description of the methodology for calculating spot rates and the rates proposed to be used to discount guaranteed contract liabilities if higher than the applicable spot rates, but the rate or rates used shall not exceed the blended spot rate, except that if the expected time of payment of a contract benefit is more than thirty (30) years, it shall be discounted from the expected time of payment to year thirty (30) at a rate of no more than eighty percent (80%) of the thirty-year blended spot rate and from year thirty (30) to the date of valuation at a rate not greater than the thirty-year blended spot rate, and shall conservatively reflect expected investment returns (taking into account foreign exchange risks);
  - (6) A statement of how the separate account's operations are designed to provide for payment of contract benefits as they become due, including but not limited to:
    - (a) A description of the method for estimating the amount and timing of benefit payments;
    - (b) The arrangements necessary to provide liquidity to cover contingencies;
    - (c) The method to be used to comply with the asset maintenance requirement;

- (d) The manner in which account assets will be allocated between the separate account, any supplemental account, and the general account;
- (e) If applicable, the deductions to be used in determining the market value of an asset when determining the asset maintenance requirement when the investment policy of the separate account and any supplemental accounts is not likely to match the performance of an interest rate series or index on which contract benefits are based; and
- (f) For index contracts, the deductions to be used for replicated (synthetic asset) transactions in determining the market value of the separate account.
- (g) For market value separate accounts supporting contracts other than index contracts:
  - (i) A description of the criteria used by the insurer in approving for contract issuance a pooled fund representing multiple employer-sponsored plans;
  - (ii) A description of risk-mitigation techniques used by the insurer in connection with contracts issued to pooled funds representing multiple employer-sponsored plans;

**Drafting Note:** A pooled fund is an arrangement in which multiple, unaffiliated employer -sponsored plans invest in a shared trust. Pooled funds generally allow plan sponsors the right to exit the fund at book value subject to advance notification requirements. In describing the criteria used by the insurer in evaluating the potential issuance of a contract, discuss the insurer's advance notification requirements and how any actual advance notifications will be monitored and reflected in the risk management of the contract.

- (7) An unqualified opinion by a qualified actuary with expertise in such matters as to the adequacy of the consideration charged by the insurance company for the risks it has assumed with respect to the contracts in the class to which the plan of operations pertains;
- (8) If hedging transactions are to be utilized in managing separate account or any supplemental account assets, a description of the instruments and techniques and an explanation of how they are intended to reduce risk of loss;
- (9) If the amount of the asset maintenance requirement depends on the separate account, any supplemental account or a subportfolio of either being duration matched, a description of the method used to determine the durations of separate account and any supplemental account assets and guaranteed contract liabilities;
- (10) If a part of the asset maintenance requirement is to be met by maintaining a reserve liability in the general account, a description of:
  - (a) The circumstances under which increases and decreases in the general account portion of the reserve liability will be made;

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- (b) The circumstances under which transfers will be made between the separate account and the general account; and
    - (c) Any arrangements needed to provide sufficient liquidity in the general account to enable the insurance company to make transfers to the separate account when due.
  - (11) A statement as to the extent to which the contracts in the class will provide or applicable law does provide that the separate account assets shall not be chargeable with liabilities arising out of any other business of the insurance company; and
  - (12) If any person other than the insurance company may authorize, approve or review the acquisition and disposition of investments for the separate account or any supplemental account, a statement of the safeguards adopted by the insurance company to assure that the actions to be taken by these persons are appropriate, including a description of the criteria used by the insurance company in selecting the person.
- C. Notwithstanding the descriptions in the plan of operations, the insurance company may change the rate used pursuant to Section 7F to discount guaranteed contract liabilities and other items applicable to the separate account or any supplemental accounts, such as if the investment portfolio is different from that anticipated by the plan of operations, provided that the rates used shall not exceed the blended spot rates as prescribed in Subsection B(5) of this section. Any such change shall be disclosed and justified in the actuarial opinion submitted pursuant to Section 10.
- D. A plan of operations filed pursuant to this section may provide that the separate account will fund guaranteed contract liabilities denominated in the currency of a foreign country with separate account and any supplemental account assets denominated in that currency, provided that at the time of issuance of the account contracts, the country is rated in one of the two (2) highest rating categories by an independent nationally recognized United States rating agency acceptable to the commissioner.
- E. The commissioner may require an insurance company to file additional information as part of the plan of operations if the commissioner determines that the plan of operations is not sufficient.

## **Section 6. Required Contract Provisions and Filing Requirements**

**Drafting Note:** Section 6 may be omitted in its entirety if the state does not require contracts to be filed for approval, and the state wishes to eliminate required contract provisions. Subsection B of this section may be omitted if a state does not require contracts to be filed for approval, but wishes to establish required contract provisions.

A contract may not be delivered or issued for delivery in this state unless the contract satisfies the requirements of Subsection A of this section and the issuing insurer has satisfied the requirements of Subsection B of this section with respect to the contract:



- A. The contract shall provide:
- (1) A description of any contractual safeguards to assure asset sufficiency, including termination events, discontinuance triggers or discontinuance options and corrective action procedures;
  - (2) A description of how any charges under the contract are computed, including, but not limited to, any risk or surrender charge; and
  - (3) For a book value contract, a description of how any market value adjustments under the contract are computed.
- B. An insurer will satisfy the filing and approval requirements of this section with respect to a contract if the insurer has filed the form of the contract with the commissioner and it is accompanied by the items specified in Paragraphs (1), (2), and (3) of this subsection, and the form of contract has been approved or has not been disapproved within the thirty-day period following the date of filing, in which event the form of contract shall be deemed approved. Notwithstanding the foregoing, the requirement for filing and approval of the form of contract may be waived at the discretion of the commissioner.
- (1) The form of the contract filed for approval shall be accompanied by a statement that the contract meets the conditions of Subsection A of this section.
  - (2) The form of contract filed for approval shall be accompanied by a statement:
    - (a) Specifying the range of variation of variable contract provisions, if any, that could have a material effect on the risk assumed by the insurer under the contract, including withdrawal methodology, crediting rate formula and termination events; and
    - (b) Listing events, if any, that give the insurer the right to terminate the contract immediately.
  - (3)
    - (a) If the plan of operations pertaining to the class of contracts to which the contract belongs has been affirmatively approved by the commissioner of the state in which the issuing insurer is domiciled, the form of a contract filed for approval shall be accompanied by a statement indicating the receipt of approval and that the approval was an affirmative approval; or
    - (b) If the plan of operations pertaining to the class of contracts to which the contract belongs has been deemed approved in the state in which the issuing insurer is domiciled, the form of contract filed for approval shall be accompanied by a statement indicating that the issuing insurer has met the requirements for deemed approval; or

**Drafting Note:** Contract forms covered by this model regulation frequently incorporate variable provisions. The statement required by Subparagraph (a) is intended to provide the information regulators need to evaluate the risks associated with such variability.

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- (c) If the plan of operations pertaining to the class of contracts to which the contract belongs has not been approved, either affirmatively or by deemer, in the state in which the issuing insurer is domiciled, the form of contract filed for approval shall be accompanied by a statement of this fact, together with a plan of operations pertaining to the contract.

**Drafting Note:** The state of filing may request the plan of operations for informational purposes and may take it into account in deciding whether to approve the form. It is not anticipated that the state of filing would review and approve the plan of operations, but may use it in connection with the review of the form of contract.

**Drafting Note:** If the plan of operations has not been approved, either affirmatively or by deemer, in the state of domicile of the issuing insurer, the state of issue, in issuing contract approvals, may wish to establish requirements to be met by the issuing insurer (e.g., a notice requirement if the plan of operations subsequently changes, or a requirement that the contract be operated in compliance with the plan of operations) in order to maintain its approval.

**Section 7. Asset Maintenance Requirements for Market Value Separate Accounts Supporting Contracts other than Index Contracts**

- A. At all times an insurer shall hold sufficient assets as a reserve in the general account, the separate account or supplemental accounts, as appropriate, such that the:
  - (1) Market value of the assets held in the separate account, plus
  - (2) The market value of any supplemental account, plus
  - (3) Any assets held in the general account as a reserve for guaranteed contract liabilities (valued in accordance with [insert reference to rules governing valuation of general account assets]), less
  - (4) The deductions provided for in Subsection B of this section, equals or exceeds the value of guaranteed contract liabilities determined in accordance with Subsection F of this section.
  
- B. In determining compliance with the asset maintenance requirement and the reserve for guaranteed contract liabilities in accordance Subsection A of this section, the insurance company shall deduct a percentage of the market value of the separate account or supplemental account asset or an amount attributable to a replicated (synthetic asset) transaction as follows:
  - (1) For debt instruments, the percentage shall be the NAIC asset valuation reserve “reserve objective factor,” but the factor shall be increased fifty percent (50%) for the purpose of this calculation if the difference in durations of the assets and liabilities is more than one-half year;
  - (2) For assets that are not debt instruments, the percentage shall be the NAIC asset valuation reserve “maximum reserve factor”; and
  - (3) For replicated (synthetic asset) transactions, the market value of the separate account or supplemental account assets shall be decreased by an amount equal to the asset valuation reserve for the transaction as if the transaction were occurring in the general account, determined in accordance with [insert reference for determining asset valuation reserve]; but to the

extent that the NAIC asset valuation reserve maximum reserve factor was not used in determining the amount of the deduction, the amount of the deduction shall be increased fifty percent (50%) for purposes of this calculation.

- C. To the extent that guaranteed contract liabilities are denominated in the currency of a foreign country and are supported by separate account or supplemental account assets denominated in the currency of the foreign country, the percentage deduction for these assets under Subsection B of this section shall be that for a substantially similar investment denominated in the currency of the United States.
- D. To the extent that guaranteed contract liabilities are denominated in the currency of the United States and are supported by separate account or supplemental account assets denominated in the currency of a foreign country, and to the extent that guaranteed contract liabilities are denominated in the currency of a foreign country and are supported by separate account or supplemental account assets denominated in the currency of the United States, the deduction for debt instruments and replicated (synthetic assets) transactions under Subsection B of this section shall be increased by fifteen percent (15%) of its market value unless the currency exchange risk has been adequately hedged, in which case the percentage deduction under Subsection B of this section shall be increased by one-half percent (0.5%). No guaranteed contract liabilities denominated in the currency of a foreign country shall be supported by separate account or supplemental account assets denominated in the currency of another foreign country without the approval of the commissioner. For purposes of this subsection, the currency exchange rate on an asset is deemed to be adequately hedged if:
- (1) It is an obligation of a jurisdiction that is rated in one of two (2) highest rating categories by an independent nationally recognized United States rating agency acceptable to the commissioner or a political subdivision or other governmental unit of the jurisdiction, or is organized under the laws of the jurisdiction; and
  - (2) At all times the principal amount and scheduled interest payments on the principal are hedged against the United States dollar pursuant to contracts or agreements that are:
    - (a) Issued by or traded on a securities exchange or board of trade regulated under the laws of the United States or Canada or a province of Canada;
    - (b) Entered into with a United States banking institution that has assets in excess of \$5 billion and that has obligations outstanding, or has a parent corporation that has obligations, that are rated in one of the two (2) highest rating categories by an independent, nationally recognized United States rating agency, or with a broker-dealer registered with the Securities and Exchange Commission that has net capital in excess of \$250 million;
    - (c) Entered into with any other banking institution that has assets in excess of \$5 billion and that has obligations outstanding, or has a parent corporation that has obligations outstanding, that are rated in one of the two (2) highest rating categories by an independent,

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nationally recognized United States rating agency and that is organized under the laws of a jurisdiction that is rated in one of the two (2) highest rating categories by an independent, nationally recognized United States rating agency; or

- (d) Entered into with an entity permitted under [insert reference to section of investment law enumerating permitted counterparties for currency hedging transactions].
- E. All or a portion of the amount needed to comply with the asset maintenance requirement may be allocated to one or more supplemental accounts. If the account contract or applicable law provides that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurance company, the insurance company shall maintain in a supplemental account or the general account the amount of any account assets in excess of the sum of (i) the amounts contributed (net of withdrawals) by the contractholder, and (ii) the earnings attributable to the amounts contributed (net of withdrawals) by the contractholder.
- F. (1) For purposes of this section, the minimum value of guaranteed contract liabilities is defined to be the sum of the expected guaranteed contract benefits, each discounted at a rate corresponding to the expected time of payment of the contract benefit that is not greater than the rate supportable by the expected return from the separate account and any supplemental account assets provided that the rate used shall not exceed the blended spot rates as prescribed in Section 5B(5) or as described in the actuarial opinion. In calculating the minimum value of contract benefits, all guaranteed contract benefits potentially available to the contractholder shall be considered in the valuation process and analysis, and the reserve held shall be sufficient to fund the greatest present value of each independent guaranteed benefit stream, including guaranteed annuitization options available.
- (2) To the extent that future cash flows are dependent upon the benefit responsiveness features of an employer-sponsored plan, a best estimate or an estimate based on the insurance company's experience shall be used in the projections of the future cash flows. In addition, the valuation actuary shall periodically review the actual experience under the contract to validate the assumptions used. In projecting cash flows for contingent benefits involving mortality, the mortality tables for these benefits prescribed or authorized in [insert appropriate section] of the insurance law shall be used.
- (3) The minimum value of guaranteed contract benefits under a contract issued to a pooled fund representing multiple employer-sponsored plans shall be determined so as to reflect projected plan sponsor contract value withdrawals available to the member plans in the pooled fund.

Projections of such future cash flows shall take into account (i) known plan sponsor withdrawals, and (ii) a prudent estimate of future plan sponsor withdrawals. The prudent estimate shall be based on company experience and other relevant criteria.

**Drafting Note:** Other relevant criteria include, but are not limited to, the pooled fund's profile (e.g. number of employer-sponsored plans, and the minimum, maximum, and average size of such plans), the minimum notice that plan sponsors are required to give in order to effectuate a plan sponsor withdrawal, the percentage of the pooled fund that is investment-only and that is full service, and economic conditions.

A single valuation rate shall be determined equal to the lesser of: (i) the expected return from the separate account, or (ii) the blended spot rate based on the duration of the separate account.

This single valuation rate shall be used to model future market values of the separate account. Future credited interest rates shall be modeled according to the contractually defined crediting rate formula. Modeled future contract values shall reflect modeled future market values, modeled future credited interest rates, known future plan sponsor withdrawals, the prudent estimate of future plan sponsor withdrawals, future withdrawals consistent with Paragraph (2) of this subsection, and any remaining final payment at the modeled contract termination date.

All such modeled withdrawals and termination payments shall be discounted using the single valuation rate and the modeled times of those withdrawals and payments. The sum of these present values shall be deemed the minimum value of the guaranteed contract liabilities for a pooled fund contract.

## **Section 8. Asset Maintenance Requirements for Market Value Separate Accounts Supporting Index Contracts**

- A. At all times an insurance company shall hold sufficient assets as a reserve in the general account, the separate account or supplemental accounts, as appropriate, such that the:
- (1) Market value of the assets held in the separate account, plus,
  - (2) The market value of any supplemental account, plus,
  - (3) Any assets held in the general account as a reserve for guaranteed contract liabilities (valued in accordance with [insert reference to rules governing valuation of general account assets]), less
  - (4) Any deduction provided for in Subsection B of this section, equals or exceeds the value of guaranteed contract liabilities determined in the manner set forth in the plan of operations.
- B. In determining compliance with the asset maintenance requirement and the reserves for guaranteed contract liabilities in accordance with Subsection A of this section, the insurance company shall deduct a percentage of the market value of a separate account or supplemental account asset as set forth in the plan of operations, and for replication (synthetic asset) transactions, the value of the separate account or supplemental account assets shall be decreased in the manner set forth in the plan of operations.
- C. All or a portion of the amount needed to comply with the asset maintenance requirement may be allocated to one or more supplemental accounts. If the account contract or applicable law provides that the assets in the separate account shall not

be chargeable with liabilities arising out of any other business of the insurance company, the insurance company shall maintain in a supplemental account or the general account the amount of any account assets in excess of the sum of (i) the amounts contributed (net of withdrawals) by the contractholder, and (ii) the earnings attributable to the amounts contributed (net of withdrawals) by the contractholder.

**Section 9. Asset Maintenance Requirements for Separate Accounts Supporting Book Value Contracts**

- A. At all times an insurance company shall hold sufficient assets in the general account, the separate account or supplemental accounts, as appropriate, such that the value of the account assets, valued as if the assets were held in the insurance company's general account, equals or exceeds the reserve required for contracts supported by the separate account, determined as if the contracts were held in the general account.
- B. All or any portion of the amount needed to comply with the asset maintenance requirement may be allocated to one or more supplemental accounts. If the account contract or applicable law provides that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurance company, the insurance company shall maintain in a supplemental account or the general account the amount of any account assets in excess of the sum of (i) the amounts contributed (net of withdrawals) by the contractholder, and (ii) the earnings attributable to the amounts contributed (net of withdrawals) by the contractholder.

**Section 10. Actuarial Opinion and Memorandum**

- A. An insurance company that maintains any separate accounts governed by this regulation shall submit an actuarial opinion rendered by the valuation actuary to the commissioner annually by March 1 showing the status of the accounts as of the preceding December 31. The actuarial opinion shall be supported by a confidential actuarial memorandum prepared by the valuation actuary rendering the opinion. The valuation actuary may be either the appointed actuary of the company or, alternatively, a qualified actuary designated by the appointed actuary to be the valuation actuary for the purpose of this regulation.
- B. The memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, are deemed to be confidential to the same extent, and under the same conditions, as the actuarial memorandum required by [insert reference to state law equivalent to Section 3 of the NAIC Model Standard Valuation Law].
- C. The memorandum shall be made available for examination by the commissioner upon his or her request, but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the commissioner.

**Drafting Note:** Each state should review its laws regarding confidentiality of industry provided information and conform those provisions accordingly.

- D. Except in cases of fraud or willful misconduct, the valuation actuary shall not be liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision, or conduct with respect to the actuary's opinion.
- E. The statement of actuarial opinion submitted in accordance with Section 10A shall cover the applicable points set forth in Section [insert reference to regulation governing content of actuarial opinion] and at a minimum consist of:
- (1) A paragraph identifying the valuation actuary and his or her qualifications;
  - (2) A scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the valuation actuary's work;
  - (3) A reliance paragraph describing those areas, if any, where the valuation actuary has deferred to other experts in developing data, procedures or assumptions (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios [insert reference to regulation governing content of actuarial opinion with respect to reliance], supported by a statement of each expert in the form prescribed by [insert reference to regulation governing content of actuarial opinion with respect to reliance]); and
  - (4) An opinion paragraph expressing the valuation actuary's opinion that, after taking into account any risk charge payable from the separate account assets and the amount of any reserve liability of the general account and amounts held in any supplemental account with respect to the asset maintenance requirement, the account assets make adequate provision for the contract liabilities.
  - (5) The opinion shall also state:
    - (a) That the level of risk charges, if any, payable to the general account was appropriate in view of such factors as the nature of the guaranteed contract liabilities and losses experienced in connection with account contracts, and other pricing factors;
    - (b) That after taking account of any reserve liability of the general account and amounts held in any supplemental account with respect to the asset maintenance requirement, the amount of the account assets satisfied the asset maintenance requirement;
    - (c) That the fixed-income asset portfolio conformed to, and justified, the rates used to discount contract liabilities for valuation pursuant to Section 7F, if applicable; and
    - (d) Whether any rates used pursuant to Section 7F to discount guaranteed contract liabilities and other items applicable to the separate account or any supplemental account were modified from the rate or rates described in the plan of operations filed pursuant to Section 5.

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- (6) One or more additional paragraphs may be needed in individual company cases as follows:
  - (a) If the valuation actuary considers it necessary to state a qualification of his or her opinion;
  - (b) If the valuation actuary must disclose an inconsistency in the method of analysis used at the prior opinion date with that used for this opinion; or
  - (c) If the valuation actuary chooses to add a paragraph briefly describing the assumptions which form the basis of the actuarial opinion.
  
- F. The opinion shall be accompanied by a certificate of an officer of the insurance company responsible for monitoring compliance with the asset maintenance requirements for the separate accounts, describing the extent to and manner in which during the preceding year:
  - (1) Actual benefit payments conformed to the benefit payment estimated to be made as described in the plan of operations;
  - (2) The determination of the value of the separate account and any supplemental account conformed to the valuation procedures described in the plan of operations, including, but not limited to, a statement of the procedures and sources of information used during the year; and
  - (3) Any assets were transferred to or from the insurance company's general account, or any amounts were paid to the insurance company by any contractholder to support the insurance company's guarantee.
  
- G. The actuarial memorandum shall:
  - (1) Substantially conform with those portions of Section [insert reference to section of the regulations related to actuarial memoranda] of these regulations that are applicable to asset adequacy testing and either:
    - (a) Demonstrate the adequacy of account assets based upon cash flow analysis; or
    - (b) Explain why cash flow analysis is not appropriate, describe the alternative methodology of asset adequacy testing used, and demonstrate the adequacy of account assets under such methodology.
  - (2) Clearly describe the assumptions the valuation actuary used in support of the actuarial opinion, including any assumptions made in projecting cash flows under each class of assets, and any dynamic portfolio hedging techniques utilized and the tests performed on the utilization of the techniques;
  - (3) Clearly describe how the valuation actuary reflected the risk of default on obligations and mortgage loans, including obligations and mortgage loans that are not investment grade;



- (4) Clearly describe how the valuation actuary has reflected withdrawal risks, if applicable, including a discussion of the positioning of the contracts within the benefit withdrawal priority order pertaining to the contracts, the impact of any dynamic lapse assumption and the results of sensitivity testing the prudent estimate of future plan sponsor withdrawals pursuant to Section 7F(3);
- (5) If the plan of operations provides for investments in separate account or supplemental account assets other than United States government obligations, demonstrate that the rates used to discount contract liabilities pursuant to Section 7F conservatively reflect expected investment returns (taking into account any foreign exchange risks);
- (6) If the contracts provide that in certain circumstances they would cease to be funded by a separate account and, instead, would become contracts funded by the general account, clearly describe how any increased reserves would be provided for if and to the extent these circumstances occurred;
- (7) State the amount of separate account assets that are not chargeable with liabilities arising out of any other business of the insurance company;
- (8) State the amount of reserves and supporting assets as of December 31 and where the reserves and assets are shown in the annual statement;
- (9) State the amount of any contingency reserve carried as part of surplus;
- (10) For book value contracts, state the market value of supporting assets; and
- (11) Where separate account assets are not chargeable with liabilities arising out of any other business of the insurance company, describe how the level of risk charges payable to the general account provider are appropriate compensation for the risk taken by the general account.

#### **Section 11. Asset Valuation Reserve**

When the insurance company values separate account or supplemental account assets at market and complies with the asset maintenance requirements of Section 7 or 8, it need not maintain an asset valuation reserve with respect to these assets.

#### **Section 12. Reserve Valuation**

- A. Reserves for contracts funded by a market value separate account supporting contracts other than index contracts shall be an amount equal to the following:
  - (1) The total reserve required to be maintained on the valuation date under Section 7;
  - (2) Plus the excess, if any, of the market value of separate account assets (to the extent that the market value of the assets determines the contractholder's benefits, i.e., to the extent the assets are beneficially "client" assets) over the amount determined in accordance with Paragraph (1) of this subsection;

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- (3) Plus any additional amount determined by the valuation actuary as necessary to make adequate provision for all of the contract liabilities;
  - (4) Plus any additional amount determined as necessary by the commissioner due to the nature of the benefits.
- B. Reserves for index contracts funded by a market value separate account shall be an amount equal to the following:
- (1) The total reserve required to be maintained on the valuation date under Section 8;
  - (2) Plus the excess, if any, of the market value of separate account assets (to the extent that the market value of the assets determines the contractholder's benefits, i.e., to the extent the assets are beneficially "client" assets) over the amount determined in accordance with Paragraph (1) of this subsection;
  - (3) Plus any additional amounts determined by the valuation actuary as necessary to make adequate provision for all of the contract liabilities;
  - (4) Plus any additional amount determined as necessary by the commissioner due to the nature of the benefits.
- C. Reserves for book value contracts shall be determined as if the contracts were held in the general account.
- D. The amount of any reserves required by Subsections A(3) and (4) or Subsections B(3) and (4) of this section may be established by either:
- (1) Allocating sufficient assets to the separate account or a supplemental account to satisfy the requirement; or
  - (2) Setting up the additional reserves in the general account.

### **Section 13. Severability**

If any provision of this regulation or its application to any person or circumstance is held invalid by a court of competent jurisdiction, that judgment shall not affect or impair the validity of the other provisions of this regulation.

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*Chronological Summary of Action (all references are to the Proceedings of the NAIC)*

*1998 Proc. 4<sup>th</sup> Quarter 15, 17, 243, 285-286, 288, 289-299 (adopted).*

*1999 Proc. 3<sup>rd</sup> Quarter 25, 26, 340, 343, 367-369 (amended).*

*2016 Fall National Meeting (amended)*

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**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

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**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Alabama	NO CURRENT ACTIVITY	
Alaska	NO CURRENT ACTIVITY	
American Samoa	NO CURRENT ACTIVITY	
Arizona	NO CURRENT ACTIVITY	
Arkansas	NO CURRENT ACTIVITY	
California		CAL. INS. CODE § 10506.4 (1996); BULLETIN 95-8 (1995).
Colorado	NO CURRENT ACTIVITY	
Connecticut		CONN. AGENCIES REGS. §§ 38a.459-10 to 38a.459-20 (2002) (previous version of model).
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida	NO CURRENT ACTIVITY	
Georgia		GA. CODE ANN. §§ 33-11-65 to 33-11-67 (2000).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Guam	NO CURRENT ACTIVITY	
Hawaii	NO CURRENT ACTIVITY	
Idaho	NO CURRENT ACTIVITY	
Illinois	NO CURRENT ACTIVITY	
Indiana	NO CURRENT ACTIVITY	
Iowa	NO CURRENT ACTIVITY	
Kansas	NO CURRENT ACTIVITY	
Kentucky	NO CURRENT ACTIVITY	
Louisiana	NO CURRENT ACTIVITY	
Maine	NO CURRENT ACTIVITY	
Maryland	NO CURRENT ACTIVITY	
Massachusetts	NO CURRENT ACTIVITY	
Michigan	NO CURRENT ACTIVITY	
Minnesota	NO CURRENT ACTIVITY	
Mississippi	NO CURRENT ACTIVITY	
Missouri	NO CURRENT ACTIVITY	
Montana	NO CURRENT ACTIVITY	
Nebraska	NO CURRENT ACTIVITY	
Nevada	NO CURRENT ACTIVITY	
New Hampshire	NO CURRENT ACTIVITY	
New Jersey	NO CURRENT ACTIVITY	
New Mexico	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
New York		N.Y. COMP. CODES R. & REGS. tit. 11, §§ 97.1 to 97.9 (Regulation 128) (1990/2014) (previous version of model).
North Carolina	NO CURRENT ACTIVITY	
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	NO CURRENT ACTIVITY	
Oklahoma	NO CURRENT ACTIVITY	
Oregon	NO CURRENT ACTIVITY	
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	NO CURRENT ACTIVITY	
South Carolina	NO CURRENT ACTIVITY	
South Dakota	NO CURRENT ACTIVITY	
Tennessee	NO CURRENT ACTIVITY	
Texas	NO CURRENT ACTIVITY	
Utah	NO CURRENT ACTIVITY	
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	NO CURRENT ACTIVITY	
Washington	NO CURRENT ACTIVITY	
West Virginia	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Wisconsin	NO CURRENT ACTIVITY	
Wyoming	NO CURRENT ACTIVITY	



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A regulator suggested that the NAIC consider the issue of guaranteed separate accounts and the existing laws. He suggested that regulators should consider whether guaranteed investment return products belong in separate accounts and, if so, should insulation from general account claims be permitted. In addition he posed the question of whether there should be unlimited investment flexibility for separate accounts funding products providing a guaranteed investment return based on an external index. Other questions he raised related to the need for a special risk reserve, a separate actuarial opinion as to the adequacy of the reserves in the separate account, and whether excess separate account assets should be permitted to be withdrawn. **1996 Proc. 4<sup>th</sup> Quarter I 385.**

Working group members agreed that there was need for a model regulation to provide a consistent regulatory framework. **1997 Proc. 2<sup>nd</sup> Quarter 284.**

A first draft of a model law was reviewed at the fall meeting in 1997. It was based on three state laws or regulations already developed. **1997 Proc. 3<sup>rd</sup> Quarter I 305, 306-312.**

The draft model was revised to make it more consistent with the Synthetic GIC Model Regulation, since the issues addressed in that model were very similar. **1997 Proc. 4<sup>th</sup> Quarter I 405.**

The commissioner presenting the model to the Executive Committee for adoption said that the evolution of separate accounts has seen a growing presence of interest rate and index guarantees. The guarantees were funded by a separate account, but were ultimately supported by the general account. This model was intended to provide a framework for these products and prescribe the conditions for issuance, the plan of operation describing the financial conditions for issuing a product, contract and filing requirements, and required reserves. **1998 Proc. 4<sup>th</sup> Quarter I 15.**

**Section 1. Authority**

**Section 2. Purpose**

**Section 3. Scope**

As the working group considered their charge, one regulator asked whether the scope of the project was limited to group pension products. The chair responded that the scope should be broad enough to cover individual products that guarantee interest rate and index or investment returns, but that the working group should begin with the most familiar current products. **1997 Proc. 1<sup>st</sup> Quarter 181.**

The first draft of the model regulation referred only to market value separate accounts. The chair noted that the group had also discussed book value accounts and group annuity guaranteed index products as possibly being within the scope of the model regulation. **1997 Proc. 3<sup>rd</sup> Quarter I 305.**

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**Section 3** (cont.)

The second draft of the model was expanded in scope to incorporate more products. Instead of including only mark-to-market products, as done in one state's regulation, revisions were made to include book value type products, consistent with the statement of statutory accounting principles. These products tended to follow the same reserving requirements as if the products were in the general account. The model was also revised to include in the scope separate accounts that guarantee an index over a period of time, versus a dollar amount or monthly income guarantees. Thus the model was expanded to include three categories of product instead of one. **1997 Proc. 4<sup>th</sup> Quarter I 405.**

A regulator expressed concern about how long these contracts might be used for new business without being brought into compliance with the regulation. Another regulator suggested including a fixed date after which all new business would need to come into compliance. **1997 Proc. 4<sup>th</sup> Quarter I 405.**

The grandfathering provisions of the scope section were revised to no longer require that a plan of operation had been approved previously in the state of domicile, but that only a contract approval was required. An interested party noted that not all states have required that a plan of operations be filed, although state approvals have been required and obtained. Where a separate account was already in place and there were contracts in force, a new reserving requirement would be disruptive. **1997 Proc. 4<sup>th</sup> Quarter I 405.**

The working group discussed why specific dates would need to be included in the model regulation, and at what point after adoption the treatment would apply. The model provided that contracts may continue to operate in accordance with the filed contract until such time as the applicable contract's provisions are substantially changed and a new filing was required. The language was included to better define new business for group contracts where the existing contract was renewed. **1997 Proc. 4<sup>th</sup> Quarter I 421.**

At its next meeting the working group again considered the effective date. One regulator suggested that the reserve provisions of the model should govern new issues immediately. An interested party urged inclusion of language to allow companies adequate lead time to get their plans of operation filed and approved. The working group agreed to include a 24-month time frame in the model for new issues under existing contracts. **1998 Proc. 1<sup>st</sup> Quarter 331.**

Interested parties noted that the language on grandfathering was not consistent with the language in Statement of Statutory Accounting Principles No. 56. A drafting note was added to define what was meant by "substantial change" using language borrowed in part from SSAP No. 56. **1998 Proc. 4<sup>th</sup> Quarter I 299-300.**

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**Section 3** (cont.)

By late in 1997 language excluding modified guaranteed annuities and modified life insurance had been incorporated in the draft. Earlier it had appeared in the purpose section. **1997 Proc. 4<sup>th</sup> Quarter I 420.**

A regulator commented that, as drafted, the scope could be misunderstood. It was noted that providing survivor income benefits applied only to group life insurance contracts. The working group agreed to move this phrase to the beginning of the sentence, even though this was the least common class of contract. **1997 Proc. 4<sup>th</sup> Quarter I 420.**

A regulator questioned whether it was the intent that this regulation would apply to contracts issued by any company in a state that adopted the model and contracts issued by a domestic company regardless of the state in which the contract was issued. The working group decided to delete a phrase that said “... agreement issued *for delivery in this state or issued for delivery outside of this state by a domestic life insurance company ....*” **1998 Proc. 1<sup>st</sup> Quarter 328.**

**Section 4. Definitions**

E. Near the end of the drafting process a regulator renewed his request for a definition of the term “affirmative approval” and use of that concept. **1998 Proc. 4<sup>th</sup> Quarter I 302.**

H. A regulator noted that in his state book value accounting was allowed under two sets of circumstances: (1) if the separate account was not insulated; and (2) if it was considered part of the general account for investment limitations. One of the drafters responded that the model draft was not approached from that perspective. **1997 Proc. 4<sup>th</sup> Quarter I 421.**

I. Near the end of the drafting process the working group decided to add this definition. **1998 Proc. 4<sup>th</sup> Quarter I 290, 303.**

M. Near the end of the drafting process, Sections 5A was modified to make it clear that the 60-day period began on the date of the filing. A regulator suggested that the language be further clarified to specifically note that the date of filing was based on the state’s submission rules. Regulators decided to add that clarification to the definition. **1998 Proc. 4<sup>th</sup> Quarter I 303.**

Q. Early in the drafting process, guaranteed minimum benefits were defined as contract benefits payable based on the greater of (1) the market value of account assets; (2) a fixed minimum guarantee related to consideration received; or (3) an amount based on a publicly available interest rate or an index of the aggregate market value of a group of publicly traded financial instruments. A regulator suggested tweaking the language of the definition, so as not to eliminate contracts the working group intended to cover. **1997 Proc. 4<sup>th</sup> Quarter I 420-421.**

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**Section 4** (cont.)

S. Equity-indexed annuities were excluded from this model regulation; however, some index contracts, including those without floor guarantees, were included. The working group discussed the definition of index contract and decided to clarify the definition to state that this includes contracts that did not provide secondary guarantees on elective benefits or maturity values. **1998 Proc. 1<sup>st</sup> Quarter 328.**

U. The definition of plan of operation used in the Synthetic GIC Model Regulation was added to the separate accounts model. **1998 Proc. 4<sup>th</sup> Quarter I 303.**

W. Early drafts of the model contained the phrase “to which assets are contributed by the contractholder” at the end of definition of separate account. The working group decided to delete the phrase because the language had become a troublesome point when discussing insulation. **1998 Proc. 1<sup>st</sup> Quarter 329.**

Y. Interested parties recommended changing the definition of supplemental account to delete “market value” in the first sentence. This change was proposed since supplemental accounts could be either book or market value separate accounts. The working group agreed to the change. **1998 Proc. 1<sup>st</sup> Quarter 329.**

AA. Regulators talked about whether an actuary should be designated to render the opinion required in Section 10. The group decided to call this individual a valuation actuary and to require his designation by the company. **1998 Proc. 4<sup>th</sup> Quarter I 303, 307.**

**Section 5. Plan of Operations Requirements**

The requirements for the plan of operation were revised to parallel that in the Synthetic GIC Model Regulation, also under development. **1997 Proc. 4<sup>th</sup> Quarter I 420.**

The working group discussed the phrase in the scope section that referred to contracts delivered in the state or issued for delivery by a domestic company and decided to delete the phrase from the scope section. At the same time the group decided to add that concept to the requirements in regard to a plan of operation filing. **1998 Proc. 1<sup>st</sup> Quarter 328.**

An interested party emphasized the industry’s concern regarding filing and approval in states. The process was often very time consuming and each regulatory reviewer had his own ideas regarding how requirements should be addressed in the filing, how it should be documented, and what was the right way to do it. The industry’s goal was to come up with a simple plan of operations that would satisfy the regulators in each of the states where the plan of operations was required to be filed. **1998 Proc. 1<sup>st</sup> Quarter 308.**

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**Section 5** (cont.)

A. Early drafts of the model contained a paragraph describing the filing requirements for domestic insurers and those for non-domestic insurers. The working group discussed filing requirements for non-domestic insurers, and expressed concerns regarding accepting filings from states where requirements for the plan of operation may not be as stringent as the model regulation. The working group agreed to amend the model to be consistent with the synthetic GIC regulation. **1998 Proc. 1<sup>st</sup> Quarter 329.**

One regulator recommended that, for insurers that have filed a contract and plan of operations in their domestic state, and have received affirmative approval of that contract and plan, if the contract is filed in a non-domestic state, subject to certain conditions, the contract and plan of operations should be deemed approved in the non-domestic state. The working group discussed the need to distinguish between affirmative approval versus just approval. **1998 Proc. 1<sup>st</sup> Quarter 307.**

Affirmative approval assumes a rigorous review of the policy form and the plan of operations against a set of standards substantially similar to the model regulation. If a non-domestic state had concerns regarding the review performed by the domestic state, the regulator could contact the domestic state to determine details of the review performed and make his own determination as to whether additional work would be required for the non-domestic state's approval. **1998 Proc. 1<sup>st</sup> Quarter 307.**

Near the end of the drafting process, Subsection A was modified to make it clear that the 60-day period began on the date of the filing. A regulator suggested that the language be further clarified to specifically note that the date of filing was based on the state's submission rules. Regulators decided to add that clarification to the definition. **1998 Proc. 4<sup>th</sup> Quarter I 303.**

B. Paragraph (7) required the actuary to opine as to the adequacy of the consideration charged by the insurer for the risks it had assumed. The working group asked the actuaries' professional association to indicate whether the current Actuarial Standards of Practice provided sufficient guidance to actuaries complying with these requirements or if additional guidance was needed. **1997 Proc. 4<sup>th</sup> Quarter I 419.**

The American Academy of Actuaries responded that the model should speak in Paragraph (7) of an "unqualified opinion" rather than a "certification." It was also their recommendation that the organization consider publishing an Actuarial Standard of Practice or a Practice Note regarding what constitutes adequacy of risk charges in the context of the model. **1998 Proc. 1<sup>st</sup> Quarter 306.**

The language "a statement certified by an actuary with expertise in such matters" was questioned. It was recommended that this be changed to "a certificate from a qualified actuary." **1997 Proc. 4<sup>th</sup> Quarter I 421.**

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**Section 5B** (cont.)

An earlier draft required a “demonstration” and the chair questioned why this language was deleted. It was explained that this was done to conform to the Synthetic GIC Model Regulation. Demonstration requirements would vary by state. The chair expressed concern that regulators would not be able to adequately evaluate the risk to the insurer if a demonstration was not required. **1997 Proc. 4<sup>th</sup> Quarter I 421.**

Near the end of the drafting process, interested parties expressed concern about the filing and approval provisions of Section 5. Insurers’ competition, usually national banks, did not have similar regulatory constraints placed on them in marketing this business, and the banks exploited this difference to the detriment of the insurance industry. Interested parties said the model regulation provided a comprehensive regulatory framework for the review and approval of the plan of operation by the domestic regulator. The industry urged regulators not to include provisions for the foreign jurisdiction to go through the exact same process that had already been carried out by the domestic regulator. **1998 Proc. 3<sup>rd</sup> Quarter 271.**

Interested parties expressed concern about including language about a nondomiciliary regulator reviewing the plan of operation. If states that have not been actively involved in the process adopt the language because it is included in the model, regulators in those states may begin in-depth review of plans of operation simply because they believe they are supposed to, rather than because of a particular concern regarding a product filing. **1998 Proc. 3<sup>rd</sup> Quarter 272.**

When it appeared that there were irreconcilable differences between the desires and needs of regulators and insurers with regard to filing and approval of the plan of operation in the nondomiciliary state, interested parties proposed a new approach they said would address the concerns of both groups. They suggested dividing the plan of operation requirements in Section 5 into two parts. The revised Section 5 would focus on financial and other requirements to write group guaranteed separate accounts business, which would be filed for approval in the home state only. A new Section 6 would be added to include contractual features and would be geared toward nondomiciliary filings. **1998 Proc. 3<sup>rd</sup> Quarter 259-260.**

**Section 6. Required Contract Provisions and Filing Requirements**

When it appeared that there were irreconcilable differences between the desires and needs of regulators and insurers with regard to filing and approval of the plan of operation in the nondomiciliary state, interested parties proposed a new approach they said would address the concerns of both groups. They suggested dividing the plan of operation requirements that were included in Section 5 into two parts. Section 5 would focus on financial and other requirements to write group guaranteed separate accounts business, which would be filed for approval in the home state only. A new Section 6 would be added to include contractual features and would be geared toward nondomiciliary filings. Under this approach the plan of operations would not be filed for approval in the nondomiciliary state. Section 6 would be optional, with a drafting note saying states could choose whether to adopt this section. **1998 Proc. 3<sup>rd</sup> Quarter 259-260.**

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**Section 6** (cont.)

Requirements for filing in the state of issue of the contract, as proposed by interested parties, included a description of the range of variability with respect to contractual features, including an indication of what changes would cause the contract to need to be refiled. Investment guidelines would not be filed for approval since they would be noted in the plan of operations filing. However, the information could be requested by a department if deemed necessary. Upon request, the insurer would provide an informational copy of the plan of operations, along with an indication of whether the filing was required in the home state and, if so, whether it was approved. **1998 Proc. 3<sup>rd</sup> Quarter 260.**

B. An interested party said that Paragraph (3) addressed the requirements for filing the contract, depending on where the plan of operation had been filed and the status of that filing. He provided a chart showing what information would be provided to the nondomiciliary regulator under each of the different possible combinations of events. **1998 Proc. 4<sup>th</sup> Quarter I 302, 306-307.**

A regulator asked what would be the result if a domiciliary regulator required the filing of the plan of operations, but not in the form required by the model. The interested party responded that the nondomiciliary regulator could decide which form of the plan of operation would be most helpful in his review of the contract. **1998 Proc. 4<sup>th</sup> Quarter I 302.**

Another regulator asked what would happen where the domestic state did not approve plans of operations as a matter of practice, and subsequent to the nondomestic regulators' approval of a product filing, the company wanted to change the plan of operations. The interested party said approval of the contract filing could be made contingent on the plan of operations being followed. A regulator recommended adding a drafting note that described what would happen where the state of domicile did not approve filings of the plans of operations. **1998 Proc. 4<sup>th</sup> Quarter I 303.**

**Section 7. Asset Maintenance Requirements for Market Value Separate Accounts Supporting Contracts other than Index Contracts**

The actuarial task force was asked to review the reserving methodologies in the model regulation. Section 7 dealt with contracts where both assets and liabilities were valued at market on the insurer's books. Section 8 dealt with contracts that guaranteed performance based on an index and Section 9 dealt with contracts where the assets and liabilities were valued exactly as if they were written in the general account. **1998 Proc. 2<sup>nd</sup> Quarter II 1233.**

The task force endorsed the reserving approach contained in the draft of the model regulation. **1998 Proc. 2<sup>nd</sup> Quarter II 1053.**

A. One state's law focused on where the assets were held and allowed a hybrid, but the rules were complicated. An interested party opined that it was not important where the companies put the customer's money, but it was important where the reserve money was. He suggested simplifying by adding a provision to indicate that 90% of the guaranteed minimum liability must be in the separate account. **1997 Proc. 4<sup>th</sup> Quarter I 421.**

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**Section 7** (cont.)

B. The chair expressed concern regarding inclusion of replication transactions within the model regulation. Another group at the NAIC was studying the issue and the chair of that group questioned whether it was appropriate for a model regulation to recognize replication transactions until that group has resolved outstanding issues. **1998 Proc. 1<sup>st</sup> Quarter 329.**

An interested party suggested leaving in the language regarding replication transactions and adding a drafting note that such transactions were not permitted for separate accounts until they were permissible for general accounts. **1998 Proc. 1<sup>st</sup> Quarter 329-330.**

E. The chair noted that the draft stated that if the contract provided that the assets in the separate account should not be chargeable with liabilities arising out of any other business of the insurer, the insurance company should maintain in a supplemental account the amount of any separate account assets in excess of the amounts contributed by the contractholder and the earnings thereon in accordance with the contract. He asked if a supplemental account would be required if the assets in the separate account were not insulated. An interested party responded that if the insurance company must contribute money due to asset losses (reserve strengthening), the assets were not insulated even if put in a separate account. He stated that it was important to distinguish between what belonged to the company and what belonged to the customer. **1997 Proc. 4<sup>th</sup> Quarter I 422.**

**Section 8. Asset Maintenance Requirements for Market Value Separate Accounts Supporting Index Contracts**

C. An interested party opined that the model provisions of Subsection C were in conflict with his state's law. The model regulation insulated the contractholder contributions plus the earnings on them, while state law also insulated the "true-up" of the separate account in case the asset performance of the separate account did not line up to the guarantee. He said it was critical to insulate this third aspect. The working group decided to leave the model as drafted. **1998 Proc. 1<sup>st</sup> Quarter 330.**

**Section 9. Asset Maintenance Requirements for Separate Accounts Supporting Book Value Contracts**

B. When the first draft including Section 9 was produced, a representative of a trade association said that, as drafted, the position was overly broad and there may be appropriate circumstances when the supplemental account or other separate account reserves should be insulated. In addition, the position taken in the first draft raised guaranty association questions, as well as issues related to rehabilitation and liquidation. **1997 Proc. 4<sup>th</sup> Quarter I 418.**

An interested party said that the provision as drafted was anti-competitive and would limit the market to highly rated companies. **1997 Proc. 4<sup>th</sup> Quarter I 406, 416.**



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**Section 9B** (cont.)

One of the drafters opined that client money and the earnings on it were insulated, but if the general account must strengthen reserves, this money would not be insulated. Reserve-strengthening money could be included, in an investment fund, but would be tracked in a supplemental account and not insulated. Under this treatment, if the insurer should become insolvent, the money would be considered insurance company assets and not walled off from creditors. **1997 Proc. 4<sup>th</sup> Quarter I 406.**

A question was raised by the working group as to whether insulation was related to guaranty association coverage and assessments for products covered by this model. An interested party opined that separate account products with guarantees were covered by the guaranty association model to the extent of the guarantee. Insulation was not the issue. **1997 Proc. 4<sup>th</sup> Quarter I 406.**

The chair opined that this model went beyond his state's position on the insulation of separate accounts. This model would permit fully guaranteed separate account GICs to be insulated and possibly carried at book value. He said it was crucial for regulators to understand the risks to the general account under such a structure, since insulation, if applicable, would result in a preferred class of contractholder. **1998 Proc. 1<sup>st</sup> Quarter 333.**

**Section 10. Actuarial Opinion and Memorandum**

The working group asked the actuaries' professional association to determine whether the current Actuarial Standards of Practice provided sufficient guidance to actuaries complying with the provisions of Section 10, or if additional guidance was needed. **1997 Proc. 4<sup>th</sup> Quarter I 419.**

A. In early drafts domestic and non-domestic insurers were treated differently. Non-domestic insurers governed by the regulation only had to submit opinions upon the commissioner's request. After discussion the group decided to revise the draft to require both domestic and non-domestic insurance companies covered by the regulation to file actuarial opinions with the commissioner. **1998 Proc. 1<sup>st</sup> Quarter 330.**

B. The working group discussed the confidentiality of the actuarial memorandum, and its relationship to the Freedom of Information Law and the Standard Valuation Law. The chair suggested requesting input from the American Academy of Actuaries on this issue. **1998 Proc. 1<sup>st</sup> Quarter 307.**

The Academy provided suggested language similar to that in the Standard Valuation Law. The organization also recommended adding a drafting note cautioning states to review their own laws on confidentiality. **1998 Proc. 2<sup>nd</sup> Quarter I 251.**

In June 1999, the working group reviewed a suggestion to amend Subsection B. Several committees were working on language regarding confidentiality and sharing of information. These amendments would conform this model. **1999 Proc. 2<sup>nd</sup> Quarter 194.**

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**Section 10** (cont.)

At the next meeting the chair noted that no comments had been received on the language. A trade association representative questioned whether the group was being premature in adopting its revision, since the final revisions on confidentiality had not been adopted. Since this revision simply referenced the Standard Valuation Law, it was deemed appropriate to proceed and the language was adopted. **1999 Proc. 3<sup>rd</sup> Quarter 343.**

D. The American Academy of Actuaries recommended adding language insulating the actuary from liability except to the insurer and the commissioner. **1998 Proc. 2<sup>nd</sup> Quarter I 251.**

F. A regulator asked if the risk charges referenced in Paragraph (5)(a) were determined in a rigorous fashion, taking into account risk within the contract, if they were determined in a more arbitrary manner, or if they were determined more in the nature of competitive considerations. He noted that when a similar question was asked in regard to the Synthetic GIC Model Regulation, the industry's response was that the risk charge for synthetic guaranteed investment contracts was aimed at a level sufficient to cover the cost of capital. If the risk charge was to cover the cost of capital, he questioned whether the actuary could opine on the appropriateness of the level of risk charges. An interested party responded that at times the cost of capital drives the pricing for this product, and at other times expected risk drives the product. He said that is more true for this product than for synthetic GICs. He further emphasized that the model did not require a specific reserve, but rather was more general in requiring the actuarial opinion to speak to the appropriateness of the level of risk charges. The working group discussed adding a disclosure requirement addressing the cost of capital and whether it was a key element in determining pricing. **1998 Proc. 1<sup>st</sup> Quarter 306-307.**

Another issue before the working group was who was the appropriate actuary to sign the actuarial opinion and memorandum required by this regulation. The question was whether the appointed actuary for purposes of this regulation should be the same appointed actuary who signed the annual statement actuarial opinion, or whether the actuary was another actuary who had been appointed expressly for the purpose of signing this actuarial opinion. **1998 Proc. 2<sup>nd</sup> Quarter I 237.**

The official position of the actuarial professional association was that whoever gave an opinion, regardless of what that opinion was, needed to certify that he was knowledgeable about the subject, that he had the appropriate background, and that he had the proper information and resources to make the opinion. **1998 Proc. 2<sup>nd</sup> Quarter I 237.**

Certifications of officers were a requirement for the actuarial opinion from the early stages of the drafting. Early in 1998 the working group discussed ways to redraft the section and agreed to move the items related to the certification of the officers to one location. **1998 Proc. 1<sup>st</sup> Quarter 330.**

G. Charges were made to this subsection during the drafting process to make it consistent with the Synthetic GIC Model Regulation. The working group decided to add language to include disclosures of the market value of supporting assets for book value contracts. **1998 Proc. 1<sup>st</sup> Quarter 330.**

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**Section 10** (cont.)

The working group requested an opinion from the American Academy of Actuaries regarding the model. The Academy suggesting using the word “adequate” instead of “good and sufficient” in both subparagraphs of Paragraph (1), because that was the language used in the actuarial opinion. A regulator questioned whether, from an actuarial standpoint, the term “adequate” was stronger or weaker than “good and sufficient.” The representative from the actuarial association responded that the second term was not as well defined as the term “adequate,” which has a degree of specificity in the actuarial guidelines. **1998 Proc. 1<sup>st</sup> Quarter 306.**

**Section 11. Asset Valuation Reserve**

**Section 12. Reserve Valuation**

A. Because Subsection A(3) asked the actuary to determine any additional amount determined by the actuary to be necessary, the working group asked the actuaries’ professional organization to determine whether the current Actuarial Standards of Practice provided sufficient guidance to actuaries complying with these requirements or if additional guidance was needed. **1997 Proc. 4<sup>th</sup> Quarter I 419.**

The actuarial group recommended that the model regulation use the term “adequate” in Paragraph (3), rather than the term “good and sufficient.” The representative from the actuarial association said that the second term was not as well defined as the term “adequate,” which has a degree of specificity in the actuarial guidelines. The organization also recommended that an Actuarial Standard of Practice or Practice Note be developed regarding what constitutes adequacy of risk charges in the context of the model. **1998 Proc. 1<sup>st</sup> Quarter 306.**

B. In early versions of the model the requirements for reserves for index contracts were different than the final version adopted. **1997 Proc. 4<sup>th</sup> Quarter I 417.** Regulators decided to parallel the language of Subsection A. **1998 Proc. 1<sup>st</sup> Quarter 317, 331.**

C. The chair expressed concern about reserving for book value contracts that may not have market value adjustment provisions. An interested party also expressed concern that the model did not adequately address the risks associated with certain book value separate accounts funding guaranteed minimum benefits. He opined that additional provisions were necessary to disclose and reserve for situations where policies funded by guaranteed separate accounts offered cash surrender values that may exceed the market value of the associated assets. **1997 Proc. 4<sup>th</sup> Quarter I 406-407, 415.**

Early drafts included a phrase “by using the same interest rates, mortality tables and methods,” which was deleted early in 1998. **1998 Proc. 1<sup>st</sup> Quarter 331.**

**Section 13. Severability**

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**Chronological Summary of Actions**

*March 1999: Model adopted.*

*December 1999: Section 10B amended.*